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who thereafter accepts from his vendor a deed with covenant of general warranty and for quiet enjoyment, and pays the cash payment for the land and executes his notes for deferred payments, and pays one of the notes and part of another, cannot after the lapse of five years, claim an abatement for the value of the trees.

2. SPECIFIC PERFORMANCE—*Ascertaining amount due before sale—Application of maxim de minimis.* In a suit for the specific performance of a contract for the sale of real estate, it is error to decree a sale of the land for default in the payment of a sum certain less the value of an overlap and direct the commissioner not to sell till the overlap was released, or the amount and value thereof was first ascertained. The release deed should have been filed, or the extent and value of the overlap should have been ascertained before the decree for the sale was entered. But as the overlap in the case at bar was ascertained to amount to only about two dollars in value, this court, on the principle *de minimis lex non curat*, will not reverse the decree.

3. SALE BY COMMISSIONER—*Bond of commissioner—Before whom to be given.* The bond required by statute to be given by commissioners to sell lands can only be given before the court which requires the bond to be given, or before the judge thereof, or the clerk of the court in his office. It is error to direct the clerk of any other court to take the bond, but if the decree directing the bond to be taken by some other court is appealed from, this court will correct the error, as the decree is simply interlocutory.

4. SURVEYS—*Horizontal measurements—Local custom.* The accurate and legal mode of surveying land is by horizontal measurement, and, in the absence of an express agreement to the contrary, it should be so measured. Local custom or usage cannot be relied on where it is in conflict with the written agreement of parties, or with well-settled rules of law. But in the case at bar no such usage or custom has been established in the manner required by law, even if it were admissible.

POWELL V. TOWN OF WYTHEVILLE.—Decided at Wytheville, July 22, 1897.—*Buchanan, J:*

1. MUNICIPAL CORPORATIONS—*Street improvements—Damages—Negligence.* A municipal corporation is not liable for consequential damages from improving its streets, where it exercises reasonable care and skill in the performance of the work which it is authorized to do, and no part of the lands of others is actually taken. But in the absence of such care and skill it is liable for all damages not necessarily incident to the work, and which are chargeable to the unskillful or improper manner of executing it.

AUGSBURG LAND AND IMPROVEMENT CO. V. PEPPER.—Decided at Wytheville, July 22, 1897.—*Riely, J:*

1. SPECIFIC PERFORMANCE—*A completed contract—When performance will be decreed.*—The burden of proving a completed contract is on the plaintiff, and when proved it is a matter of sound judicial discretion with a court of equity whether it will decree its specific performance. If under all the circumstances the contract appears to be fair, equal, and just in its terms, and free from all fraud, illegality or other inequitable features, its specific performance will be decreed. In the case at